

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the matter of)	
)	
Amendment of Parts 73 and 74 to further)	RM No. 11810
implement the Local Community Radio Act)	
of 2010 and make other improvements to the)	
Low Power Radio Service)	

Comments of the Educational Media Foundation

Educational Media Foundation (“EMF”), by its attorneys, hereby offers these comments on REC Networks’ (“REC”) Petition for Rulemaking (“Petition”).¹ As set forth below, EMF urges the Federal Communications Commission (“FCC” or “Commission”) to proceed with caution as it gives further consideration to this Petition.

I. INTRODUCTION AND SUMMARY

EMF is a noncommercial broadcaster, holding licenses for more than 300 full-power noncommercial educational broadcast radio stations which operate in both the reserved and unreserved portions of the FM band, and it is also the licensee of a similar number of FM translators, operating in communities large and small across the country. Given its extensive experience in operating both full-power stations and FM translators, EMF is well positioned to offer its comments on the Petition.

REC seeks through its Petition to give Low Power FM (“LPFM”) stations more flexibility as to the location of their transmitter sites by taking advantage of interference standards similar to those which apply to FM translators. Yet, REC seeks to allow LPFM stations to choose the rules which will apply to them, allowing them to choose when they have to

¹ See Petition for Rulemaking of REC Networks, RM No. 11810 (filed June 13, 2018) (“Petition”).

protect other FM stations by contour protection rules, and when they can choose to rely on spacing rules which may avoid the potential downside of being forced to cease operations when real interference is caused to prior users of the FM spectrum. The real possibility of being forced off the air because of interference to an existing FM station poses a risk for translator operators every time any new translator is activated or any technical change made. This protection from real interference is essential for the preservation of the existing habits of radio listeners who count on hearing their favorite stations when they turn on the radio. To truly be equivalent to translators, as REC seems to desire, the risks from actual interference must go hand-in-hand with any flexibility accorded to LPFM stations in the selection of their transmitter sites. EMF has long argued, and continues to believe, that LPFM stations already are granted interference rights more liberal than those accorded to translators, in violation of the terms of the Local Community Radio Act (“LCRA”).² The proposals set out in REC’s Petition would only make such favoritism worse. Any changes in the rules should only be adopted if the responsibilities to protect against interference, to the full extent such rules apply to FM translators, are accepted by all LPFM stations seeking any deviations to the specified spacing rules, including those who take advantage of second-adjacent channel waivers.

II. DISCUSSION

The Petition is premised on alleviating what it terms the “unnecessary overprotection” to full-power FM stations and FM translators it believes is provided by the current spacing rules.³ In fact, existing FM services are already under-protected from LPFM, and the proposals of REC would only exacerbate such under-protection. REC is asking for LPFM stations to be treated

² Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2010) (“LCRA”).

³ See Petition at 1.

more like FM translators, which the LCRA states are supposed to be “equal in status” to LPFMs.⁴ To remedy the existing inequality, before allowing any further liberalization in LPFM site location rules, the FCC must recognize a fundamental tenet for its policy in this area: these secondary stations need to protect existing listeners of existing stations anywhere those listeners reside – even outside of protected service contours of the primary station. The almost absolute protections afforded to existing FM stations resulting from the rules prohibiting new interference is what allows translators to have flexibility in their transmitter site location. As LPFM is, under the terms of the LCRA, supposed to be equal in status to FM translators, the same protections for existing FM-band users should apply to LPFMs not only under REC’s proposed new more flexible site location standards, but also more broadly whenever these stations cause real interference to existing FM users, especially where an LPFM has requested any waiver of any FCC rule or otherwise sought to use some new more flexible approach to site location.

The centerpiece of REC’s proposal is that LPFM stations be allowed to locate at sites closer than currently authorized under the spacing requirements for 100 watt LPFM stations, if they meet the spacing requirements for LPFMs limited to 10 watts of effective radiated power and if they have an interfering contour which does not overlap the protected contour of existing FM stations.⁵ Arriving at this proposal requires REC to interpret the language of the LCRA in a manner going far beyond its plain meaning, and to otherwise totally ignore other language contained in the statute, all of which preclude the outcome REC advances.⁶

⁴ *Id.* § 5 (stating the FCC must ensure “FM translator stations, FM booster stations, and low-power FM stations remain equal in status and secondary to existing and modified full-service FM stations”).

⁵ *See* Petition at 2, 14-15 ¶ 20.

⁶ *Id.* at 15 ¶ 21.

The LCRA, as REC acknowledges, states that the Commission “shall not amend its rules to reduce the minimum co-channel and first-and second-adjacent channel distance requirements in effect on the date of enactment of this Act....”⁷ This statutory language clearly states the intent of Congress that the protections LPFMs accord to existing FM stations, which were in the Commission’s rules at the time the Act was adopted, cannot be changed by the FCC. Even with Congress’ clear statement of intent, REC suggests the statute can be read to allow the Commission to approve 100 watt LPFM stations (and even those operating at higher power – the never previously authorized 250 watts) at the mileage spacings which applied to 10 watt stations at the time of the Act.⁸ REC also proposes to leave the spacings for 100 watt LPFM stations as an option LPFM operators can opt into when they choose to not use the proposed more liberal rules.⁹ The Commission simply cannot find this strained reading of the LCRA reasonable, as it would undercut the careful balance of interests Congress adopted in the Act.

REC fails to mention in its recitation of the statutory history of LPFM regulation that the LCRA was the result of a carefully negotiated agreement between LPFM advocates and broadcast groups, principally the National Association of Broadcasters. The LPFM advocates were seeking to have Congress recognize that the FCC need not enforce third-adjacent channel separation protections between LPFM stations and existing FM users, while broadcasters feared the interference to existing radio service the elimination of those protections could bring about. The result was a carefully balanced statute which abolished third-adjacent channel spacing restrictions but required the preservation of other spacing rules, except in specific situations in

⁷ LCRA § 3(b)(1); *see* Petition at 15-16 ¶ 22 (stating “REC also recognizes that the LCRA specifically states that the Commission shall not amend the minimum co-channel, and first- and second-adjacent channel separation requirements”).

⁸ Petition at 15-17 ¶¶ 22-24.

⁹ *Id.* at 18 ¶ 26.

which waivers of the spacing requirements would be entertained only where no actual interference was caused (specifically with respect to second-adjacent channel stations).¹⁰ The Act set out obligations of LPFM stations to resolve interference complaints arising from the operation of third-adjacent channel LPFM stations at less than the mileage separations which existed prior to the adoption of the Act, and required the LPFMs seeking waivers of the second-adjacent channel spacing requirements cease operations in the event of any complaint of interference from any existing FM station. In light of these careful compromises which allowed for more LPFMs while carefully protecting existing FM users from interference, REC's claims that the statute allows for the authorization of high-power LPFM stations at spacings which were designed to provide protection from LPFMs operating at only 10 watts simply cannot be credited.

Even if not barred by the LCRA, REC's proposal must be viewed with skepticism. The Petition is premised on LPFM stations protecting other FM users based on a contour overlap methodology.¹¹ In its proposed methodology, REC proposes to protect certain existing FM stations to their 54 dBu contour, others to the 57 dBu contour, and the remainder (including all Class A and Class C full-power stations) only to their 60 dBu contour – their normally protected

¹⁰ REC also misstates the language of the LCRA with respect to second-adjacent channel waivers, suggesting such waivers were permitted when “the proposed facility will not cause interference to *any second-adjacent* channel radio service.” See Petition at 9 ¶ 9. In fact, Section 3(b)(2) of the LCRA allows such waivers if the LPFM applicant shows that it will “not result in interference to *any* authorized radio service.” LCRA § 3(b)(2) (emphasis added). The clear language of the statute precludes interference to any FM station, not just those on second-adjacent channels. While the Commission has ruled that an LPFM applicant need only demonstrate that it will not cause interference to full-power stations on second-adjacent channels in an application for the application to be processed, EMF submits that a clear reading of the statute makes clear if actual interference is caused to any station by any LPFM with a second-adjacent channel waiver, that LPFM station may not continue to operate. See *Application of Razorcake/Gorsky Press, Inc. for a New LPFM Station at Pasadena, California*, Order on Reconsideration, 31 FCC Rcd 6593 (2017); see also LCRA § 2(b)(2)(B)(1).

¹¹ Petition at 13-14 ¶¶ 19-20.

contours.¹² In describing its proposal for Section 73.815, REC suggests that any LPFM opting to be processed under this standard be subject to “an additional layer of interference rules similar to §74.1204(f) and §74.1203(a).”¹³ Yet this additional layer of interference rules is never again mentioned in the REC pleading, and specifics for this additional layer of protection do not appear to be included in the proposed rules appended to the Petition. Unless such an additional layer of protection is included in any rules moving towards translator spacing standards, the REC proposal would not give LPFM stations the parity with translators which they claim they are seeking – it would give these stations far greater protection than accorded translators. More importantly, it would not protect radio listeners from the interference that may arise in real-world conditions when an LPFM is constructed in reliance on the predictions made by the contour-overlap methodology.

Translators are required to protect all regular listeners of pre-existing FM stations, even if those users are outside of the station’s normally protected contours. In research relating to the FCC’s recent Notice of Proposed Rulemaking on resolving complaints of interference between translators and full-power stations,¹⁴ EMF confirmed it has large numbers of regular listeners who listen to its stations at locations beyond the predicted 39 dBu contour of the station. To require an LPFM to protect stations only to their 54 (or in many cases their 60) dBu contour will be to intentionally disrupt the listening habits of an untold number of radio listeners. Thus, to truly make LPFM “equal in status” to FM translators, the additional layers of protection required of FM translators are necessary to protect all listeners of existing stations.

¹² *Id.* at 51.

¹³ *Id.* at 14-15 ¶ 20.

¹⁴ *See Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference*, Notice of Proposed Rulemaking, MB Docket No. 18-119, FCC 18-60 (rel. May 10, 2018).

In fact, as noted above, LPFMs are already given benefits which would never accrue to FM translators.¹⁵ The FCC has in one case allowed for the grant of LPFM applications with second-adjacent channel waivers, even where such stations if constructed are predicted to cause massive interference to existing FM services which are co-channel to the LPFM.¹⁶ In urban areas, second-adjacent channel waivers allow LPFMs to be shoehorned into transmitter sites where they would otherwise not be able to locate. Especially in mountainous terrain, this can result in the creation of huge areas of interference. REC itself notes that the existence of “foothill area[s] with terrain so unique that there were areas between 2 and 10 miles to the east” where the LPFM contours extended far beyond what was expected when the mileage separation rules were adopted.¹⁷ These are not necessarily unique situations, but situations that occur wherever an LPFM station is located in a foothills area, where the terrain to one side is very low, and the terrain to the other is significantly higher. While the height above average terrain of the LPFM antenna may be within permissible limits when the heights along these contours are averaged, the actual interfering contours of the LPFM over the lower land areas can vastly exceed the protections built into the mileage separation rules. In such areas, as in the Los Angeles market, tremendous interference can be caused within the service area of existing full-power stations – interference which would never be permitted if caused by a translator.

REC itself, in its Media Modernization comments, suggested that these situations should be reviewed.¹⁸ If the Commission is going to review the Petition as to alleged areas of overprotection of LPFM, it must also investigate whether its rules should allow this under-

¹⁵ See *supra* n.10 and accompanying text.

¹⁶ *Id.*

¹⁷ Petition at 32 ¶ 53.

¹⁸ See Comments of REC Networks, MB Docket No. 17-105, at 1-2, 18-19 ¶ 30 (filed June 27, 2017).

protection of full-power stations. In fact, to truly move LPFM stations closer to equality in status with translators, the Commission should emphasize the clear language of the LCRA which requires LPFMs with second-adjacent channel waivers not cause interference to “any station,” including the protection of listeners to co-channel stations just as much as it protects listeners to stations operating on second-adjacent channels.¹⁹ In these foothills areas, according to this one Commission decision,²⁰ LPFMs can have their applications processed under second-adjacent channel waivers, even where massive interference is caused to fully-spaced co-channel stations.²¹ Waivers should not be allowed where massive interference is caused to stations on any channel. Thus, as part of any flexibility accorded to LPFM, the fundamental principle that interference should not be caused to existing FM users must be recognized in all situations where LPFMs are accorded any site-location flexibility, including in instances of second-adjacent channel waivers.

REC, even though it acknowledged the problematic nature of these situations in its Media Modernization comments, now suggests that these foothills areas where LPFM signals travel far beyond what would be anticipated in normal terrain might be areas in which it is appropriate for the LPFM station to be authorized a booster.²² REC recognizes, in its proposed amendments to Sections 74.1204(f) and 74.1203(a), interference from such boosters to any service from a pre-existing FM station, even outside of a station’s protected service area, would be banned. As boosters operating so as to rebroadcast these foothills LPFM stations would only increase

¹⁹ LCRA § 3(b).

²⁰ *See Application of Razorcake/Gorsky Press, Inc. for a New LPFM Station at Pasadena, California*, Order on Reconsideration, 31 FCC Rcd 6593 (2017).

²¹ The Commission has not yet resolved what will happen if, when an LPFM with a second-adjacent channel waiver, commences operations, and actual interference to listeners to a co-channel station is caused. EMF expects this issue will arise at the FCC if the clarifications which it urges here are not adopted.

²² Petition at 32 ¶ 53.

potential interference to preexisting stations, this protection is crucial. No booster can be authorized where there is any predicted or actual interference to any regular listening to a pre-existing station, no matter the channel on which the preexisting station operates. This protection for all existing stations, no matter the channel on which they operate, should be emphasized if any expanded use of boosters for LPFM stations is permitted.

The proposed change in the definition of “minor change” in the LPFM rules also serves to increase the potential for more interference to full-power stations. If an LPFM can change transmitter sites through a minor change to any location which has a 60 dBu overlap with the station’s current facility, such a move could permit LPFM stations to aggravate existing instances of interference, such as those described above in foothills areas, without the petition to deny period applicable to major changes. Such moves should not be permitted as minor changes unless they are accompanied with the same caveats which EMF urges be attached to all of these proposed rule changes: the move cannot create any real or predicted interference to any listener of any pre-existing station – even outside the normally protected contour of these stations. Flexibility for LPFM stations should not come at the cost of the destruction of existing listening patterns of radio consumers.

Also concerning is REC’s proposal to allow LPFMs to use directional antennas to protect second-adjacent channel stations. Such a proposal again would allow LPFM stations to be crammed into high-interference urban environments (the acknowledged goal of the REC proposals). Again, any such flexibility must also come with the requirement that any LPFM using such an antenna be subject to obligations like those imposed by Sections 74.1204(f) and 74.1203(a). And it must be made clear that these interference protections apply to all pre-existing stations – not just those on second-adjacent channels. LPFMs should not be accorded

more flexibility in site location at the cost of any loss of existing service – no matter on what channel that service may be provided.

III. CONCLUSION

For the reasons set forth herein, the Commission must review with extreme skepticism the Petition filed by REC. REC misreads the clear language of the LCRA and falsely claims that it seeks equality with FM translators for LPFM stations. In reality, it seeks the flexibility which comes from translator rules based on interference without the full accountability attached to translators which cause actual interference. LPFM cannot have its cake and eat it too. If REC wants more flexibility in locating LPFM stations, it must be subject to the same accountability rules wherever it operates. One of the Commission's bedrock principles, in all licensing of translators and LPFM stations, should be the protection of pre-existing services before authorizing any supplemental services from these low-power stations. Such protections need to very clearly apply to all existing stations, no matter on what channel they operate.

Respectfully submitted,

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Dated: July 20, 2018